

OLD RECORD COPY

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31 JUL 1978

MR

R.P. - Pro Leg.

MEMORANDUM FOR THE RECORD

SUBJECT: Intelligence Charter Legislation Hearing on 18 July 1978

1. On 18 July 1978, the undersigned attended an SSCI charter legislation hearing at which testimony was heard from Laurence H. Silberman, Senior Fellow with the American Enterprise Institute and of Counsel, Dewey, Ballantine, Bushby, Palmer and Wood; and Jerry Berman, Legislative Counsel, ACLU. Also appearing was John H. F. Shattuck, Director, ACLU.

2. Mr. Silberman made the following points:

--He objected to what he called the underlying premise of Title II, S. 2525, that Congress should legislate in excruciating detail to either authorize or prohibit every conceivable activity in the area of intelligence or counterintelligence which touches U.S. persons and, should further, provide detailed guidance as to the priority and duration of intelligence and counterintelligence techniques.

--While the Attorney General must play a direct role in the supervision of the operation of intelligence and counterintelligence vis-a-vis U.S. persons and also supervise all phases of FBI activity, such supervision should focus on policy and should not extend to approval of every single target of surveillance, every technique and the enforcement of arbitrary time limits.

--Mr. Silberman also argued that the threshold test for initiating any counterintelligence activity is tied too closely to violation of U.S. criminal law--mere collection of information (as opposed to disruptive tactics) or passive surveillance should not be subject to such limitations.

--Title II, according to Mr. Silberman, contains a "casual and wholesale delegation to the judiciary to enforce and interpret much of Titles I and II [which will result in a] blizzard of litigation..."

--Overall, Mr. Silberman pointed out, Title II is much too expansive an encroachment into Executive authority to protect the country's national security, on the part of both the Congress and the Judiciary.